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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDERICK SEBASTIAN MALONE,

Defendant and Appellant.

E063411

(Super.Ct.No. RIF1401626)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On February 18, 2015, defendant and appellant Frederick Sebastian Malone pled guilty to two counts of forcible rape (counts 1-2; Pen. Code, § 261, subd. (a)(2))¹ and five counts of assault by force likely to cause great bodily injury (GBI) (counts 3 & 5-8; § 245, subd. (a)(4)). On February 20, 2015, the court sentenced defendant to an aggregate, determinate term of imprisonment of 15 years as provided in his plea agreement.

After defendant filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying three potentially arguable issues: (1) whether defendant was properly advised of his constitutional rights prior to entering his plea; (2) whether there was a factual basis for the plea; and (3) whether defendant's sentence was in accordance with the plea agreement. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On October 17, 2013, the People charged defendant in Riverside County Superior Court case No. RIF1311553 by felony complaint with rape by means of force or fear (count 1; § 261, subd. (a)(2)) and kidnapping to commit rape (count 2; § 209, subd. (b)(1)). At defendant's arraignment on the complaint, the court advised defendant of his constitutional rights to a speedy and public trial by a judge or jury, to confront and cross-

¹ All further statutory references are to the Penal Code unless otherwise indicated.

examine witnesses, to present evidence on his own behalf, and on his privilege against self-incrimination.

After the preliminary hearing, the People charged defendant on February 26, 2014, by felony information with rape by means of force or fear. (Count 1; § 261, subd. (a)(2).) The People additionally alleged defendant had kidnapped the victim (Victim #1) by movement which substantially increased the risk of harm to Victim #1 over and above that necessarily inherent in the underlying offense (§ 667.61, subd. (d)(2)) and had kidnapped Victim #1 in violation of section 207, 209, or 209.5 (§ 667.61, subd. (e)(1)). Counsel stipulated at defendant's arraignment that defendant had been advised of his legal and constitutional rights.

On April 3, 2014, the People charged defendant by separate felony complaint in Riverside County Superior Court case No. RIF1401626 with two counts of kidnapping to commit rape (counts 1 & 3; § 209, subd. (b)(1)) and two counts of rape by means of force or fear (counts 2 & 4; § 261, subd. (a)(2)) against two additional victims, Victim #2 and Victim #3. On April 4, 2014, at defendant's arraignment on the information in the latter case, defense counsel waived "formal reading of complaint and stipulate[d] defendant ha[d] been advised of [his] legal [and] constitutional rights."

On April 21, 2014, the People filed a motion to consolidate both cases. At the preliminary hearing on the latter case, the court granted the People's motion for consolidation. On May 2, 2014, the People charged defendant by felony information in the consolidated case with three counts of rape by means of force or fear (counts 1, 2, &

4; § 261, subd. (a)(2)) and assault by means likely to produce GBI as to Victim #2 (count 3; § 245, subd. (a)(4)). The People additionally alleged as to counts 1 and 2 that defendant had kidnapped the victims by movement which substantially increased the risk of harm to the victims over and above that necessarily inherent in the underlying offense (§ 667.61, subd. (d)(2)); had kidnapped the victims in violation of sections 207, 209, and 209.5 (§ 667.61, subd. (e)(1)); and, with respect to the case in its entirety, had committed a qualifying sex offense specified in section 667.61, subdivision (c) against more than one victim (§ 667.61, subd. (e)(4)). On May 5, 2014, at the arraignment on the information, counsel stipulated defendant had been advised of his legal and constitutional rights.

On February 18, 2015, defendant initialed and signed a plea agreement. Defendant specifically initialed provisions of the plea agreement advising him of his constitutional rights to a speedy and public trial by a judge or jury, to face and cross-examine witnesses against him, to compel witnesses to attend his trial and present evidence in his defense, his rights against self-incrimination and to testify on his own behalf, and to be represented throughout trial by a lawyer appointed by the court for free if he could not afford one. Defendant signed the agreement indicating he had read and understood the entire document and waived all his constitutional rights enumerated and initialed by him therein.

Defendant's counsel signed the agreement's provision providing: "I am the attorney for the defendant. I am satisfied that (1) the defendant understands [his]

constitutional rights and understand[s] that a guilty plea would be a waiver of these rights; (2) the defendant has had an adequate opportunity to discuss [his] case with me, including any defenses [he] may have to the charges; and (3) the defendant understands the consequences of [his] guilty plea.” The plea agreement added four counts of assault by force likely to cause GBI (counts 5-8; § 245, subd. (a)(4)), provided for defendant’s plea of guilty to all counts except count 4, provided for dismissal of the remaining count and allegations, and provided for a determinate term of incarceration of 15 years.

On the same date, the court orally amended the information to include the additional counts enumerated in the plea agreement. The court indicated its understanding that defendant would enter a guilty plea to counts 1 and 2, both of which would constitute strike offenses, and counts 3 and 5 through 8, in return for a determinate term of imprisonment of 15 years. Defendant stated that was his understanding as well. The court noted it had a felony plea form on which appeared defendant’s name and initials and asked if the initials and name were defendant’s. Defendant answered they were.

The court asked whether defendant had read and understood each item where his initials appeared and signed the form. Defendant responded he did. The court asked if defense counsel had been available to defendant to answer any questions defendant had about the plea. Defendant responded that defense counsel had been so available.

The court explained the constitutional rights defendant would be giving up if defendant entered the contemplated plea. Defendant responded that he understood. The court and defendant engaged in the following colloquy:

“THE COURT: And you’ve had enough time to talk to your attorney about the facts of this case and any defense that you might have to these charges and the resolution of the case?

“THE DEFENDANT: Yes, sir.

“THE COURT: Any questions for me, sir?

“THE DEFENDANT: No, sir.”

Defendant pled guilty as recounted above. Defense counsel indicated she was satisfied the plea was freely and voluntarily entered. As a factual basis for the plea, defendant admitted having forcible sexual intercourse by means of force likely to cause GBI against Victims #1, #2, and #3.

On February 20, 2015, the court sentenced defendant to an aggregate, determinate term of 15 years’ incarceration as contemplated in his plea agreement. The court dismissed count 4 and struck the enhancements attached to counts 1 and 2.

On April 20, 2015, defendant filed a notice of appeal challenging the validity of the plea. Defendant requested issuance of a certificate of probable cause indicating he “was coerced into signing a deal without understanding the nature of the case(s)/offenses alleged against [him].” Defendant contended he suffered from mental illness, told defense counsel he wanted to go to trial, did not want to give up his rights, and would like

to withdraw his plea. Defendant further asserted defense counsel told him she did not have trial experience, did not visit with him to discuss the case, was “very unprofessional,” and instructed defendant to answer “yes” to everything asked of him by the court. The court granted the request for a certificate of probable cause noting defense counsel “is an experienced and conscientious attorney.” The court further noted that “some of the allegations are ridiculous, but it is my understanding that I am not to evaluate credibility in this context.”

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (See *People v. Patterson* (1984) 151 Cal.App.3d 252, 255 [trial court to consider factors such as whether a defendant’s plea was entered voluntarily, whether the trial court failed to advise a defendant of his constitutional rights, and whether there was an inadequate factual basis for the plea before granting a request for a certificate of probable cause]; § 1237.5.)

III. DISPOSITION

The judgment is affirmed.

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KING
J.

We concur:

HOLLENHORST
Acting P. J.

McKINSTER
J.